

WILSON, ELSER, MOSKOWITZ
ELDEMAN & DICKER, LLP
Attorneys for the City Defendants
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Attn: Peter A. Meisels, Esq.
Lalit K. Loomba, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARC FISHMAN, INDIVIDUALLY, and on behalf of all others :
similarly situated, :
 :
Plaintiff, : Docket No. 19 CV 265
 : (NSR)
 :
-against- :
 :
CITY OF NEW ROCHELLE, New Rochelle Police Department, : CITY DEFENDANTS'
LANE SCHLESINGER, individually and in his administrative : NOTICE OF MOTION TO
and official capacity as a police officer #1058 employed by the : DISMISS COMPLAINT
City of New Rochelle, JOSEPH F. SCHALLER, individually, and :
in his administrative and official capacity as a police :
commissioner/officer employed by the City of New Rochelle, and :
W. JOSEPH, individually, and in his administrative and official :
capacity as a police officer/detective #18 employed by the City of :
New Rochelle, and WESTCHESTER COUNTY, :
 :
Defendants. :
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TO: MARC H. FISHMAN, *Pro Se*
3200 Netherland Avenue, Apt. G
Bronx, NY 10463

PLEASE TAKE NOTICE that, upon the annexed notice to pro se litigant who opposes a Rule 12 motion supported by matters outside the pleadings dated July 17, 2020; the annexed declaration of Lalit K. Loomba, dated July 17, 2020; the accompanying memorandum of law dated July 17, 2020; and all the prior proceedings herein, defendants City of New Rochelle, Police Commissioner Joseph Schaller, Sgt. Myron Joseph (s/h/a as "W. Joseph"); and Police Officer Lane Schlesinger (collectively, the "City Defendants"), will move this Court, before the

Hon. Nelson S. Roman, on September 16, 2020, or on such other date as the Court may determine, for an Order, pursuant to Rule 12(b)(2) , Rule 12(b)(5) and Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing plaintiff's complaint with prejudice, and for such other, different and further relief as the Court in its discretion may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to the briefing schedule established by order of the Court, opposition to the within motion must be served (but not filed) on the undersigned on September 1, 2020, and reply papers must be served on September 16, 2020. All papers are to be electronically filed on September 16, 2020.

Dated: White Plains, New York
July 17, 2020

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
Attorneys for the City Defendants


Lalit K. Loomba

Peter A. Meisels
Lalit K. Loomba

1133 Westchester Avenue
White Plains, NY 10604
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Our File No. 07367.00109

Certificate of Service

Lalit K. Loomba, an attorney admitted to practice law before the Courts of the State of New York and the United States District Court for the Southern District of New York, hereby certifies, under penalty of perjury, that on July 17, 2020, I caused the within document entitled **“THE CITY DEFENDANTS’ NOTICE OF MOTION TO DISMISS”** and all documents annexed thereto, to be served on:

MARC H. FISHMAN, <i>Pro Se</i> 3200 Netherland Avenue, Apt. G Bronx, NY 10463	OFFICE OF THE WESTCHESTER COUNTY ATTORNEY Attorneys for Defendant Westchester County 148 Maritime Avenue, 6 th Floor White Plains, NY 10601 (914) 995-2684 Attn: Taryn A. Chapman-Langrin, Esq.
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at the address(es) designated by said attorney(s) for that purpose by causing to be deposited a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.



Lalit K. Loomba

Lalit K. Loomba